

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5471 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

POLOTEK RUBBER INDUSTRIES

Versus

STATE OF GUJRAT

Appearance:

MR SK JHAVERI. Sr.Advocate with Mr K S Jhaveri
for Petitioner

Mr M R Anand, GP with Ms.Harsha Devani, AGP for the
State.

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 14/08/96

ORAL JUDGEMENT

This Special Civil Application has been filed against the order passed by the Gujarat State Cooperative Tribunal (for short 'the Tribunal') dated 10.7.1985 wherein it is held that every application for adjournment

submitted before the Cooperative Tribunal or Board of Nominee shall be affixed with court fees stamp of Rs.0.65 paise and that there will be one relief in one application.

2. In order to appreciate the controversy involved in this Special Civil Application, it would be appropriate to acquaint with the relevant provisions of Bombay Court Fees Act, 1950 (adopted by State of Gujarat by adoption of Laws Order 1959), and the Gujarat Cooperative Societies Act, 1961 and the Regulations made thereunder. The Bombay Court Fees Act, 1959 (for short 'the Act of 1959') has been enacted to consolidate and amend the law and fees taken in respect of certain matters in the State of Gujarat, other than fees falling under entries 77 and 96 of List I in the Seventh Schedule to the Constitution of India. Article 1 of Schedule II provides for fixed court fees to be paid on application or petition. The relevant item No.4 and 6 of Article 1 reads as follows:

SCHEDULE II

FIXED FEES

| ----- | | |
|--------|------------|---|
| Number | Proper fee | |
| 1 | 2 | 3 |
| ----- | | |

Appli- When presented to any Civil one rupee
cation Court other than a principal Civil
or Court of original jurisdiction, or
peti- to any Court of Small Causes cons-
tion tituted under the Provincial Small
Causes Courts Act, 1887 (IX of
1887), or to a Collector or other
officer of revenue or to a public
officer in relation to any suit or
case in which the amount of value
of the subject matter is less than
fifty rupees, not being an applica-
tion for assistance under section
86 of the Bombay Land Revenue Code
1879 or under any corresponding
law for the time being in force;

When presented to a Civil Cri-
minal or Revenue Court, or to
a Collector or any Revenue
Officer or to a public officer
having jurisdiction equal or

subordinate to a Collector,
or to any Magistrate in his
executive capacity and not
otherwise provided for by this
Act."

Article 36 provides for appeal or application to the
Tribunal. Section 1 of the Act provides for title,
extend, commencement and applications. While sub-clause
(2) extends the applicability to whole of State of
Gujarat, sub-clause (4) excludes its application to
presentation before officer serving under the Central
Government and sub-clause (5) excludes the field covered
by special law. Sub-clause (5) of section 1 reads as
under:

"(5) In the absence of any specific provision to
the contrary, nothing to this Act shall affect
any special law now in force relating to fees
taken in the Courts and public offices".

The Gujarat Cooperative Societies Act has been enacted to
consolidate and amend the law relating to co-operative
societies to the State of Gujarat. It is a complete code
regarding Cooperative Societies in the State of Gujarat.
Section 100 deals with the decision of Registrar or his
nominee or board of nominee. Sub-clause (3) of section
101 authorises the Registrar to specify by a general or
special order, the scale of fees and expenses that may be
made payable to him or his nominee or, as the case may
be. It is stated that the Registrar, Cooperative
Societies, State of Gujarat by order dated 5.7.84 has
provided specific scale of fees and expenses to be
deposited regarding disputes under section 96 of the Act.
A copy of which has been placed on record. Chapter XIII
deals with Appeals, Reviews and Revisions. Sub-section
(1) of section 150 provides that the State Government
shall constitute a Tribunal called the Gujarat State
Cooperative Tribunal to exercise the functions conferred
on it by or under the Act. Sub-clause (7) of Section 150
empowers the Tribunal to frame regulations consistent
with the provisions of the Act and rules made thereunder
for regulating its procedure and the disposal of its
business subject to previous sanction of the State
Government. The Tribunal as constituted sub-section (1)
of section 150 has framed regulations known as Gujarat
State Cooperative Tribunal Regulations 1964. (for short
'Regulations of 1964'). Chapter III of the Regulations
provides for presentation. registration and admission of
Appeals and Applications. Sub-clause (4) of Regulations

6 provides that every memorandum of appeal or application for revision, review or restoration shall bear a court fee stamp of Rs.5/-.

3. Thus, a reading of sub-clause (5) of section 2 shows that provisions of the Act of 1959 are not attracted where specific provision has been made to the contrary under any special statute. A reading of the provisions of the Cooperative Societies Act of 1961 shows that adequate provision has been provided under the said Act with respect to the proceedings before the Board of Nominee and the Tribunal constituted under the Act. Sub-section (3) of section 101 empowers the Registrar to specify by general or special order the scale of fees. It is not in dispute that the Registrar has exercised this power and issued circular dated 5.7.1984. Similarly, in case the Tribunal Regulations have been made in exercise of power under sub-section 7 of section 150 of the Act of 1961, the Tribunal has provided the procedure and the levy of fees under the said Regulations. Thus, the Cooperative Societies Act of 1961, a special statute, is a complete code in itself and it provides for not only the procedure but also the levy of fees for the proceedings before the Board of Nominee as well as the Tribunal. In view of this, there cannot be any dispute that the provision of Court Fees Act are not extended to proceedings under the Cooperative Societies Act. It is however contended by Mr M R Anand, learned Government Pleader that no provision has been made either by the Registrar or by the Tribunal with respect to the stamps to be affixed on the adjournment application and as such in absence of specific provision, the provisions of Bombay Court Fees Act will be attracted and fees shall be required to be levied in accordance with the schedule II. It is true that the Notification dated 5.7.1984 issued by the Registrar as well as the regulations framed by the Tribunal are silent with respect to levy of court fees on adjournment application, however, the absence of the provision must be understood as that the Registrar or the Tribunal did not intend to levy court fees on application for adjournment application. In view of this, no Court Fees stamps is required to be affixed on adjournment application.

5. It appears that attention of the Tribunal was not invited towards the provisions of sub-clause (5) of section I of the Act of 1959. If the Registrar or the Tribunal wants to levy court fees on adjournment applications, the power is with them and it is for them

to consider and exercise the power in accordance with law.

6. In view of the aforesaid, this Special Civil Application is allowed. The judgment of the Tribunal dated 10.7.1985 is hereby quashed and set aside.

Rule is made absolute accordingly with no order as to costs.

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